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5. Assignations of All Sums Securities

Dr Ross G Anderson

No appointment was ever more successful and none illustrates more clearly the desirability of having as a professor one who is conversant with the practice of the branch of the law he is called on to teach. To set a man to teach conveyancing who is not engaged in large practice, and who only knows the subject from books or historically, is like making a man professor of surgery who has only read about it and who never performed an operation.¹

A. The Chair of Conveyancing

(1) Introduction

Robert Rennie was appointed the Professor of Conveyancing in 1993. During a tenure marked by indefatigable industry, Robert's chair became, in the eyes of the profession, the face of the Glasgow Law School. With Robert's retirement, there comes the opportunity to reflect not just on Robert's contributions, but also on the place of the Chair he has held with such distinction in the Scottish legal profession, in legal education and in

¹ D Murray, *Memories of the Old College of Glasgow* (1927) 236, describing the first holder of the Chair of Conveyancing, Professor Anderson Kirkwood.

legal scholarship. So before addressing the technical topic I have chosen for my contribution, it is first to the history and context of the Chair that I turn.

(2) The first Conveyancing Chairs

2014 saw the Tercentenary of the appointment of the first holder of the Regius Chair in Civil Law in the University of Glasgow, William Forbes in 1714. But it was in the nineteenth century that the Universities of Glasgow and Edinburgh founded chairs of Conveyancing. If the word “conveyancing” is considered to be a word for which Scots lawyers have peculiar affinity, it may be because University Chairs in Conveyancing is a peculiarly Scottish phenomenon (although the basic idea which underlies these Chairs – is modern phenomenon in the United States, where they are Professors of clinical legal education). The creation of the Chair of Conveyancing in the University of Edinburgh marked a significant break with the effective monopoly exercised by the Faculty of Advocates on the chairs in law in the University, since appointment to the Chair of Conveyancing would come from the ranks of the Society of Her Majesty’s Writer’s to the Signet. The notion of the “lower branch” of the legal profession – solicitors – being remotely qualified to found a University Chair was a source of considerable invective from members of the Faculty of Advocates, the politically conservative members of which found the appointment of the leading Whig, and future editor of the *Edinburgh Review*, Macvey Napier, as the first holder, almost too much to bear.² One of the most prolific contributors to the contemporary conservative periodical, *Blackwoods Edinburgh Magazine*, himself an advocate, pointedly observed how, in England, conveyancing was in the hands of the bar:³ the English, he ventured, would “laugh” even to hear even of a *lectureship*, never mind a *Professorship*, of conveyancing in

2 “Francisculus Funk,” “The Pluckless School of Politics, No 1” (1823) 14 *Edinburgh’s Blackwood Magazine* 139–44. Funk was the pseudonym of John Cay, Advocate: see A L Strout, *A Bibliography of Articles in Blackwood’s Magazine: volumes I through XVIII, 1817–1825* (1959) 110. Cay was sheriff at Linlithgow from 1825 to 1865. Cay was one of the oldest friends of John Gibson Lockhart (for whom see n 202 below): D Douglas (ed), *The Journal of Sir Walter Scott, from the original manuscript at Abbotsford* (1890) (reprinted 2013) I, 22, n 1. For the background to the Edinburgh Conveyancing chair in the WS Society’s lectures, first given by Robert Bell, brother of George Joseph, see my “Introduction” to G Watson (ed), *Bell’s Dictionary and Digest of the Law of Scotland*, 7th edn (1890) (reprinted 2012) xviii–xxxi.

3 As it remains to this day: see, for instance, the references to “conveyancing counsel” in the English Civil Procedure Rules, r 40.18 and 40.19 and Practice Direction 40D.

a University.⁴ The “abstruse science” of conveyancing,⁵ in so far as it related to deeds, according to this disaffected and “nearly fee-less advocate” was insufficiently learned to justify the erection of a University Chair; and *esto* there was a need for such a chair – as advocates say – only a member of the Faculty of Advocates would be sufficiently respectable to hold it.⁶

The background to the Glasgow Conveyancing chair is no less without human interest. As in Edinburgh, the local professional association – of which a good proportion of Glasgow’s law graduates have become members – the Faculty of Procurators in Glasgow,⁷ finding the instruction of the University Professors out of touch with the needs of aspiring writers,⁸ took matters into its own hands. The Faculty of Procurators appointed, in 1816, one of its own, James Galloway, to give a series of lectures on Conveyancing. Galloway’s lively lectures, though now largely forgotten,⁹ display considerable learning and a palpable enthusiasm for the subject.¹⁰ Eventually, the Faculty of Procurators agreed to endow a chair in the University, on the Edinburgh model, in 1861.¹¹ The first holder was Anderson Kirkwood, of whom David Murray – someone well placed to judge¹² – wrote the words which introduce this contribution. The central

4 “C.N.,” “Tail-Piece” (1823) 14 *Edinburgh’s Blackwood Magazine* 144. “C. N.” = Christopher North, the pseudonym of a number of contributors, often John Wilson, Advocate and Professor of Moral Philosophy in the University of Edinburgh, but in this case Strout (n 200) attributes this tail-piece to John Gibson Lockhart, Advocate, but best known as a satirist and as the biographer of his father-in-law, Sir Walter Scott.

5 Cf G L Gretton, “Sharp Cases make Good Law” 1994 *SLT* (News) 313-14: “Feudal law is hardly a popular subject. Indeed, together with ‘mediaeval’ and ‘Dickensian’ it is an all purpose term used for condemning the grubby and unwanted survivals of an obscure and barbarous past. Of course, most feudal law has long since been abolished. But some parts remain, perhaps unloved, and perhaps unloveable, but law.”

6 Pluckless, “School of Politics” (n 200) 139 ff.

7 See D Murray, “The Faculty of Procurators in Glasgow” (1897) 13 *Scottish Law Review* 36. The Faculty received its royal patronage from His Majesty in 1950. For Murray, see n 210 below.

8 Compare the French ‘*écrivain*’ and David Murray, “The Term ‘Writer’ as used in Scotland,” *Glasgow Herald*, 15 March 1884.

9 D M Walker, *A History of the School of Law: The University of Glasgow* (1990) 41.

10 J Galloway, *Lectures in Conveyancing* (1838).

11 Ordinance of the Scottish Universities Commission, 15 June 1861, signed by John Inglis (then Lord Advocate): *Edinburgh Gazette* June 18, 1861, 792-93.

12 A remarkable lawyer, scholar (not just in law) and bibliophile, Murray was himself a conveyancer: see e.g. J Rankine, J L Mounsey and D Murray (eds) *The Scots Style Book* (1902-1905) 7 vols. A founding partner of Maclay Murray & Spens LLP, he was arguably the foremost Scottish legal scholar of the generations his long life spanned. He donated 24,000 items of this 40,000 volume library to the University of Glasgow. To this day, that collection, too little recognised, remains one of Glasgow’s greatest resources. For Murray, see M S Moss, “Murray, David” *Oxford DNB* (2004-).

importance to the University of a Professor with the invaluable experience of the law in action, as well as law in the books, is evident in the roles of the first two holders of the Chair, whose efforts were instrumental in organising the practicalities – funding, contractual negotiations and dealing with the small matter of acquiring the site – for Sir George Gilbert Scott's unmistakable building at Gilmorehill.¹³

(3) The 1916 election to the Conveyancing Chair

The Emeritus Professor of Comparative Law at Oxford, Bernard Rudden, himself a qualified solicitor, once pointed out that academics are, from the nature of their position, risk averse, sometimes unsuited, and often little grounded, in the realities of commercial life.¹⁴ And it is difficult to imagine any Professor, insulated from the pressures of daily practice, and whose knowledge of the law was derived only from the books, being able to offer to students Galloway's lively, if portentous, admonition that:¹⁵

One single blunder in a deed, by which it may be rendered invalid and ineffectual – whether this may have arisen from ignorance, or carelessness – might have the effect to subject the unfortunate conveyancer by whom the deed had been framed, in damages, to such a ruinous extent, as might blast all his future prospects, and involve him in penury and misery during the remainder of his life...

But practical experience and scholarly achievement are not mutually exclusive: a point perhaps never better demonstrated in the 1916 election to the Chair of Conveyancing. The election would mark the first appointment of a professional academic in the modern sense to a law chair at a Scottish university. David Murray, whose words open the present contribution, was a colossus not just in the west of Scotland but of the Scottish legal profession as a whole. A former Dean of the Faculty of Procurators, he was a member of the Council of the Faculty of Procurators that made the appointment to the 1916 Chair. All of the applicants wrote to Murray personally and, characteristically, Murray has meticulously

¹³ Murray (n 199).

¹⁴ B Rudden, "Selecting Minds: An Afterword" (1993) 41 *American Journal of Comparative Law* 481 at 486.

¹⁵ J Galloway, *Lectures on Conveyancing* (1838) 9. The student or academic reader who considers the warning overblown should reflect on *Lonedale Ltd v Scottish Motor Auctions (Holdings) Ltd* [2011] CSOH 4.

preserved each application for posterity.¹⁶ The other members of Council who would have been eligible to vote were William Gillies (Dean), David Murray (Ex-Dean), James Mackenzie (Ex-Dean), Peter Lindsay Miller, John Mair, William George Black, Thomas Alexander Fyfe, Andrew Mackay, James Graham, Daniel Munro Alexander, and Allan Maclean.¹⁷

(4) The candidates

In the election there were 13 candidates, all drawn from the local profession. For present purposes, historical interest immediately focuses on three of those candidates: Hugh Reid Buchanan, John Richard Cunliffe, and William Sharp McKechnie.

John Richard Cunliffe, a local writer with long experience, submitted a modest letter of application focussing on his practical experience and eschewing testimonials. Almost as an afterthought, Cunliffe mentions in passing that, since he was applying for a University Chair, it might be “not irrelevant to mention that I have done a good deal of literary work,” referring to his editorial work on a number of English classics and his *New Shakespearean Dictionary* (1910). Having been spared the responsibilities of the Conveyancing Chair, Cunliffe would go on to produce *Blackie’s Compact Etymological Dictionary* (1922) and the standard student text, *A Lexicon of the Homeric Dialect* (1924). To put the merit of that work in modern context, it was republished in the United States by the University of Oklahoma, in 1963, with paperback editions following in 1977 and, again, as recently as 2012.¹⁸

Hugh Reid Buchanan,¹⁹ a prize-winning MA philosophy graduate, had proceeded to Germany, to study at Jena and Berlin, where he had spent two years studying philosophy and jurisprudence, before returning to take an LLB with distinction. He had been the University’s lecturer in Roman law before becoming the solicitor to the Caledonian Railway Company and, at the time of his application, a partner with M’Grigor Donald & Co. His time at the Railway Company had made him valuable contacts with establishment figures: Buchanan’s testimonials for the chair contained

16 *Applications for Chair of Conveyancing* (1916) [GUL Sp Coll Mu21-a.3].

17 *Minute Book of the Royal Faculty of Procurators*.

18 In addition, Cunliffe compiled *Blackie’s Compact English Dictionary of Current English* (1969) and the *Secondary School English Dictionary* (1969).

19 See 1912 *SLT* (News) 85 for a portrait. Walker, *School of Law* (n 207) 85 described Buchanan as a “vigorous and scholarly man.”

references from the Dean of the Faculty of Advocates (and future Lord President) James Avon Clyde, KC MP; a future Dean of the Faculty of Advocates and Court of Session judge, J Condie S Sandeman KC; and two future Lords of Appeal in Ordinary: H P Macmillan KC (Lord Macmillan) and William Watson KC MP (Lord Thankerton).

William S McKechnie²⁰ was one of Glasgow's limited number of DPhil graduates,²¹ who had received his doctorate for his published work, *The State and the Individual*.²² With that solid scholarly background, McKechnie, after working for a time as a writer,²³ took his first academic post at Glasgow University as the Lecturer on Constitutional Law and History. He was, during his time as a lecturer, extraordinarily productive: producing what, a century on, is still considered to be a fundamental study of the sources for *Magna Carta*;²⁴ a critique of Parliament's second chamber in *Reform of the House of Lords*²⁵ (which heavily influenced the Parliament Act 1911); and a monograph setting out the constitutional consequences of that far-reaching measure, *The New Democracy and the New Constitution*, in 1912.

As a professional academic, McKechnie had applied for a University Chair before. In 1909, McKechnie had applied for the Chair of Constitutional

20 See J S Medley (revd J C Holt) "McKechnie, William Sharp (1863-1930), historian" *Oxford DNB* (2004-); 1911 *SLT* (News) 9 for a portrait; and 1916 *SLT* (News) 89.

21 Glasgow, like Edinburgh, St Andrews and Aberdeen, awarded the DPhil, as the arts and humanities research degree, until at least 1917 with the regulations being finally amended in 1919 to introduce the PhD as the higher research degree: Regulations for the Degree of Doctor of Philosophy (University Court Ordinance No LXXIV (Glasgow n 21)), as approved by Order in Council, dated 18th August 1919. The Ordinance is reproduced in A Clapperton (ed) *University Court Ordinances 1915-1924* (1925) 66-67. Ironically it was in 1917, just as the Scottish universities introduced the PhD as its standard "lower" doctorate, that the DPhil became the standard Oxford doctorate: R Simpson, *The Development of the PhD Degree in Britain, 1917-1959 and since: An Evolutionary and Statistical History in Higher Education* (2009).

22 W S McKechnie, *The State and the Individual: an introduction to political science, with special reference to socialistic and individualistic theories* (Glasgow, 1896). W Innes Addison, *A Roll of the Graduates of the University of Glasgow, 31st December 1727 to 31st December 1897* (1898) 674 and 681 records that 2 DPhils were awarded in 1896.

23 McKechnie had been admitted as a member of the Faculty of Procurators in 1890 after serving his apprenticeship with Robertson, Low, Robertson and Cross. He appears to have practised full-time until 1894.

24 W S McKechnie, *Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction* (1905) (2nd edn 1914) (reprinted 1958); R H Helmholz, "Magna Carta and the Ius Commune" (1999) 66 *University of Chicago Law Review* 297 at 303. The full text of McKechnie's study has now been made available online by the Liberty Fund as one of the classic text's on liberty, available at <http://oll.libertyfund.org/titles/338>

25 W S McKechnie, *The Reform of the House of Lords* (1909).

Law and Constitutional History in the University of Edinburgh. McKechnie submitted what were probably (at least at that time)²⁶ the most impressive set of testimonials ever compiled for a Professorial appointment to a Scottish law chair:²⁷ with a printed booklet containing glowing testimonials from scholars in Scotland, England, France, Germany, Austria and the United States, together with reviews from the *Times Literary Supplement*, *The Daily Telegraph*, *The Manchester Guardian*, some US newspapers, reviews in French and German journals, as well as the Scottish newspapers. But to no avail: the election to the Edinburgh constitutional Chair too was in the gift of the Faculty of Advocates and the Faculty, true to form, appointed one of their own, Hepburn Miller.²⁸

An academic background, however, was no guarantee of election to the Glasgow Conveyancing Chair in 1916. For although his talents as a legal scholar were beyond question, some members of the Council wondered how McKechnie would manage to discharge the duties of the chair – which, after all, required the teaching not of constitutional theory, but the intricacies of feudal conveyancing; and, moreover, placed a heavy demand on the Professor for opinions and appointment in many title deeds as arbiter (“a kind of official referee,” the English authors of his *Dictionary of National Biography* entry record). McKechnie did have conveyancing experience: he had practised full-time for four years after he qualified as a partner in the firm of McKechnie and Gray. And although, for the best part of twenty-five years, he had worked in the University, he had continued to practice and the firm remained in existence until 1915.

26 Hector MacQueen has suggested that “the most distinguished field of candidates ever for a law chair in a British university” were received by the University of Edinburgh in 1938 for the Edinburgh Chair of Civil Law, which attracted Fritz Schulz, Fritz Pringsheim Adolf Berger, David Daube and F H Lawson: see H L MacQueen, “Two Toms and an Ideology for Scots Law” in E C Reid and D L Carey Miller (eds), *A Mixed Legal System in Transition: T B Smith and the Progress of Scots Law* (2005) 44 at 56. The Chair was in the gift of the Faculty of Advocates who nonetheless managed to elect one of their own, the “atrabilious” Matthew G Fisher KC (who had studied in Göttingen), for whom, see Sir Nicholas Fairbairn QC, *A Life is too Short, autobiography*, vol I (1987) 61 and A F Rodger, “David Daube 1909-1999” (2001) 118 ZSS (RA) xxi-xxii. Fisher’s entire scholarly output appears to have been a single article mid-way through his two-decade tenure.

27 *Application and testimonials of William Sharp McKechnie, M.A., LL.B., D.Phil., Lecturer on Constitutional Law and History in the University of Glasgow, for the Chair of Constitutional Law and Constitutional History in the University of Edinburgh* [GUL Sp Coll MacLehose 688].

28 His father was a Lord of Session, Lord Craighill.

David Murray, for his part, though well qualified to judge McKechnie's scholarship, was of the view that McKechnie was not the man for the Chair, instead considering Buchanan "the best of all the candidates, followed by Cunliffe." The implication is that Murray placed McKechnie third. But Murray's was not the majority view. For the end result, recorded by Murray, placed Buchanan only fourth; McKillop, third; and Cunliffe, second. "Leaving Dr McKechnie," Murray tersely noted, "as elected."²⁹ Murray's dissatisfaction may be reflected in his recording of contemporary professional gossip. "After McKechnie had been elected, it was remarked," Murray pointedly noted on the front of Alexander Donaldson's application (Donaldson came seventh), "that, as he [McKechnie] knew nothing about Conveyancing he should take a six month course with Mr Donaldson, so as to qualify himself."³⁰

(5) Wider significance of McKechnie's appointment

It is a modern phenomenon that University Law Schools are often conspicuous for the absence of academic staff with experience of legal practice. It has long been suggested that there is much to be gained for legal scholars from obtaining at least the minimum experience of legal practice. But McKechnie's appointment is a rare example of a professional academic being elected by a professional body for a coveted post. He was, indeed, the first professionally trained academic – published doctorate and all – to be appointed to a chair of law in a Scottish university. He voluntarily created honours courses for advanced study. With his scholarly background, and his own experience of professional practice, it is near certain that McKechnie would have been intimately familiar with the history and tradition of the Chairs of Conveyancing in Glasgow and Edinburgh. There was thus an obvious subject for his inaugural lecture. So, in the autumn of 1916, McKechnie chose to address the matter of professional pride that had hung over the lecturers and professors of Conveyancing – members, to a man, of the lower branch of the profession – for over a century: "Conveyancing as a University Study."³¹ It may be, in no small part, due to the stature of men like McKechnie in the twentieth

²⁹ The election took place on 2 March 1916: *Glasgow Herald*, 3 March 1916.

³⁰ Murray noted this on the front of Donaldson's application. Donaldson, on the vote, was placed seventh.

³¹ Murray's collection (n 225) preserves a flyer for the lecture: Wednesday 18th October 1916 at 4.30pm.

century that the Chairs of Conveyancing have maintained, until now, such a central role in the Scottish Universities. But McKechnie's appointment was of wider significance still: McKechnie's career set the mould for the full-time professional legal academic in Scotland.³²

(6) The end of an era

In 1970, the holder of the Chair was J M Halliday.³³ Amongst many other works, Halliday published a commentary on the Conveyancing and Feudal Reform (Scotland) Act 1970. The preface records that he was indebted to Mr Robert Rennie for being "largely responsible for preparation of the index."³⁴ I suspect this invaluable contribution to a standard text was what may have been, in University language, Robert's first "scholarly collaboration" (Robert, with characteristic modesty, described to me his input to that commentary more prosaically: "that's all you were allowed to do in those days"!) But however that may be, I have chosen to honour Robert's service as a worthy holder of a Chair which has had many worthy holders by delving into areas surrounding the practical operations of the assignation of rights in security.

B. Two Aspects of Standard Securities

The "accessory principle" is a well-known principle common to most European legal systems. The accessory principle applies, in particular, to securities, whether real securities (such as the landlord's hypothec) or personal securities (such as cautionary obligations). The accessory principle has a number of aspects. One is that the accessory, the security, cannot exist in the abstract, for it is parasitic to the principal. Discharge of the principal debt thus extinguishes, *ex lege*, the accessory security. Another aspect is transfer: where the principal goes, so too must the accessory security follow (*accessorium sequitur principale*).³⁵ Cautionary

32 W S McKechnie's son, Sheriff Hector MacKechnie KC too would make a significant contribution to the study of Scots law in his work as the first Literary Director of the Stair Society.

33 Halliday himself was honoured with a valuable *Festschrift*: D J Cusine (ed) *A Scots Conveyancing Miscellany: Essays in Honour of J M Halliday* (1987).

34 J M Halliday, *The Conveyancing and Feudal Reform (Scotland) Act 1970* (1970) v.

35 *Selby v Brough* (1794) 2 Ross LC 661 at 666 per Lord President Campbell; *Watson v Bogue* (No.1) 2000 SLT (Sh Ct) 125 and *Trotter v Trotter* 2001 SLT (Sh Ct) 42.

obligations and floating charges – the subject of Robert’s PhD³⁶ – are good examples of where assignation may occur automatically.³⁷

As Andrew Steven has demonstrated, however, the Scottish standard security pays little heed to such fundamental doctrines as the accessory principle.³⁸ On Steven’s examination the standard security proves not to be much of an accessory security at all.³⁹ But the problems to which the accessory principle seeks to provide answers often relate not to questions of property law – who holds the security – but to questions of debt:⁴⁰ which debts, incurred to which creditor, are covered? It is this general issue I wish to address in this contribution in the context of the assignation of all sums securities.

C. Further Advances

(1) Heritable securities pre-1970

Prior to the introduction of the standard security with the Conveyancing and Feudal Reform (Scotland) Act 1970, there were three ways of constituting a heritable security: (i) the pecuniary real burden; (ii) the bond and disposition in security and (iii) the *ex facie* absolute disposition qualified by back letter. For present purposes, suffice it to say that one of the drawbacks of the bond and disposition in security was that it was security only for the sums advanced by the creditor on or around⁴¹ the time the security was taken – further advances made after the security had been taken were liable to founder on the Bankruptcy Act 1696 which struck are

36 R Rennie, *Floating Charges: A Treatise from the Standpoint of Scots Law* (PhD, University of Glasgow, 1971).

37 Assignation of standard securities, as will be seen, is covered by an express statutory provision: Conveyancing and Feudal Reform (Scotland) Act 1970, s 14, which innovates on the common law *accessorium sequitur principale* rule. The assignation of floating charges, in contrast, is regulated by the ordinary law of assignation and thus more easily effected.

38 A J M Steven, “Accessoriness and Security over Land” (2009) 13 *Edinburgh Law Review* 387.

39 Steven (n 236).

40 For the statutory definition of which, see n 54 below.

41 It was accepted that the money need not be advanced until after the debtor had signed the bond for the money: *Dunbar v Abercromby* (1789) 2 Ross LC 638 at 644 *per* Lord Eskgrove. “The limits of this rule,” Gloag conceded, “are not very easy to define”: Gloag and Irvine, *Rights in Security* (1897) 67. Today the issues often arise under the Insolvency Act 1986, s 245, for which, see *Re Shoe Lace Ltd* [1992] BCC 367 at 369-70 *per* Hoffmann J, *affd* [1993] BCC 609.

“debts contracted for thereafter.”⁴² All sums securities could not therefore be effectually created over real rights in land;⁴³ moreover, according to Lord Justice Clerk Braxfield, an agreement to provide credit was not, for the purposes of the 1696 Act, a debt.⁴⁴

But the law developed. From 1814, the creation of a revolving facility was permitted by way of the cash credit bond and disposition in security where credit to a certain sum was committed up to which limit the borrower could redraw even after the granting of the security.⁴⁵ Another development was the recognition that the security conferred on a holder of an *ex facie* absolute disposition was such as to cover further advances. The borrower under such a security was not the owner of the lands secured: the security holder became the owner and the borrower had a reversionary personal right to reconveyance of his property on repayment of the indebtedness to the security holder. And this right to reconveyance could itself be used as a security. So suppose Brian granted to the Bank of Scotland for “all sums due or which hereafter may become due” an *ex facie* absolute disposition to the Bank of Scotland. Having borrowed £1,000 from the Bank of Scotland at 8%, the Bank of Ireland offers him credit for a second ranking security at 7%. Brian assigns his reversionary right in security to the Bank of Ireland. Intimation of that security to the Bank of Scotland has the effect of limiting the existing security for the sums already advanced. Although not spelled out in the speeches of the House of Lords in *Union Bank of Scotland Ltd v National Bank of Scotland Ltd*,⁴⁶ the rationale for the rule where a second ranking security is constituted, was stated by Lord Chelmsford in

42 RPS 1696/9/57. It is necessary to appreciate the distinction between sasine and infeftment which, until the Infeftment Act 1845, were two separate procedures: see *Burnett's Tr v Grainger* 2004 SC (HL) 19 at para [91] *per* Lord Rodger of Earlsferry.

43 *M'Lellan's Creditors* (1734) House of Lords, unreported: see Erskine, 2.3.50 and Bell, *Commentaries* (7th edn 1870) II, 730.

44 *Stein's Creditors v Newnham, Everett & Co* (1794) 2 Ross LC 648 at 650 (in which the Lord President sat as Lord President Probationer). See too Lord Braxfield in *Pickering v Smith* (1788) 2 Ross LC 645 at 647: “An infeftment is not to dance backward and forward; if extinguished today, it cannot revive tomorrow.” Braxfield's view is not modern Scots law.

45 Payment of Creditors (Scotland) Act 1814 (54 Geo III, c 37) s 14. Statutory authority for such a revolving facility remains in the form of the Debts Securities (Scotland) Act 1856 (19 & 20 Vict, c 91), s 7 and, in addition, 1970 Act, s 9(6): “The Bankruptcy Act 1696, in so far as it renders a heritable security of no effect in relation to a debt contracted after the recording of that security, and any rule of law which required that a real burden for money may only be created in respect of a sum specified at the date of creation, shall not apply in relation to a standard security.”

46 (1886) 14 R (HL) 1, following the decision of the House in an English appeal, *Hopkinson v Rolt* (1861) ER 829.

Hopkinson v Rolt to be to ensure that no “perpetual curb is imposed on the mortgagor’s right to encumber his equity of redemption.”⁴⁷ The rationale is similar to that underlying the doctrine of catholic and secondary creditors: the catholic creditor cannot be allowed to (ab)use his position to destroy the security of subsequent creditors. In modern terms, the policy could be stated to be to encourage competitive lending and to ensure that any attempts by the first creditor, in contract, to monopolise his position as lender to the borrower, is not supported by the general law.

(2) Clayton’s case issues

In a case where there are two separate securities – one ranking after the other – the effect of notice of the subsequent security crystallises the sum due. Crystallisation is also important in order to apply the rule in *Clayton’s case*,⁴⁸ that the earliest debit is extinguished by the earliest credit. In the event that the first creditor does not rule off the crystallised sum, and ensure any further advances (such as cheques honoured after the crystallisation date) are recorded in a separate account: otherwise any repayments made by the debtor will automatically reduce the secured (pre-crystallisation sum) rather than the unsecured sum (post-crystallisation advances).

(3) The modern law

But the modern statutory provisions allow the first ranking security holder to maintain his priority for “any future debt which, under the contract to which the security relates, he is required to allow the debtor in the security to incur.”⁴⁹ The scope of the rule on further advances is thus much reduced under s 13. Moreover, with the abolition of the ranking preference afforded by an inhibition,⁵⁰ many of the issues surrounding further advances and

⁴⁷ *Hopkinson* (n 244) 845.

⁴⁸ *Devaynes v Noble (Clayton’s Case)* (1816) 35 ER 767 at 793. See further P Hood, “Clayton’s Case and Connected Matters” 2013 *Juridical Review* 501-39.

⁴⁹ 1970 Act, s 13(1)(b). Unlike under Land Registration Act 2002, s 49 there is no need for the obligation to make further advances to appear on the register. For floating charges, see Companies Act 1985, s 464(5)(b): “future advances which he may be required to make under the instrument creating the floating charge or under any ancillary document.”

⁵⁰ Bankruptcy and Diligence (Scotland) Act etc 2007, s 154.

which Robert explored in detail,⁵¹ no longer arise. There is also the is a curious discrepancy between the provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970 and the Companies Act 1985 on the case of further advances by second ranking security holder. Originally both acts contained the wording still found in the Companies Acts: where a second ranking security is taken which is intimated to the first ranking security holder, the effect of intimation is to restrict the first-ranking security to the “advances” presently made or which he may be required to make.⁵² The 1970 Act was, however, amended in 2003 in the course of the *Entfeudalisierung* of Scottish immoveable property law,⁵³ as a result of which “advances” was replaced in s 13 of the 1970 Act with the more readily intelligible “debts.” “Debts” is defined in the 1970 Act to include any obligation, whether or not it is an obligation to pay money.⁵⁴ “Advance,” in contrast, is limited to money claims. How the s 13 notice works in a case where there is a standard security in respect of a continuing obligation by the debtor to do something other than to pay money is not clear.

(4) Relevance to assignation cases

The point about further advances is that the authorities referred to relate always to the situation where there are two separate security rights. The modern legislation – s 13 of the 1970 Act and s 464(5) of the 1985 Act – now expressly sanctions the situation where the first ranking security holder (subject to the law of catholic and secondary creditors) can maintain his priority for further advances. That this position has been reached in the context of two securities is important when we turn to consider the policy

51 R Rennie, “Inhibitions, Standard Securities and Further Advances” (1994) 39 *JLSS* 52.

52 Companies Act 1985, s 464(5).

53 Title Conditions (Scotland) Act 2003, s 111. The operation of s 13 of the 1970 is excluded in relation to the issue of perpetual debentures under s 736 of the Companies Act 2006: Redemption of Standard Securities (Scotland) Act 1971, s 2. Section 4 of the 1971 Act provides that the 1970 Act and the 1971 Act may be cited together as the “Conveyancing and Feudal Reform (Scotland) Acts 1970 and 1971.”

54 1970 Act, s 9(8)(c): “‘deb’ means any obligation due, or which will or may become due, to repay or pay money, including such obligation arising from a transaction or part of transaction in the course of any trade, business or profession, and any obligation to pay an annuity or *ad factum praestandum*, but does not include an obligation to pay any ... rent or other periodical sum payable in respect of land, and ‘creditor’ and ‘debtor’ shall be construed accordingly.”

and principle that should apply in the case of an assignation of a single security.

D. Assignation of All Sums Securities

(1) Gretton's article on all sums securities

Another contributor to this *Festschrift* in Robert's honour is himself an honoured member of that most exclusive club, dwindling – with Robert's retirement – to three members *ordinarius*, and known to Lords of Appeal in Ordinary as “the Professors of Conveyancing.”⁵⁵ Professor George Gretton. It was Gretton who first recognised the importance of Lord Dunpark's decision in *Sanderson's Trs v Ambion Scotland Ltd.*⁵⁶ Judgment was given in 1977 and, until it was belatedly reported in 1994, was not widely known.

(2) Sanderson's Trs

The case was unusual. S Ltd granted to H Ltd a standard security over development land. H Ltd then assigned its standard security to the trustees of a discretionary trust, in security, for a loan of £28,000. The standard security was granted for all sums due or to become due by S Ltd to H Ltd. The standard security and the assignation of it were recorded, in the order of standard security followed by assignation, on the same day. Following registration, the trustees made further advances to S Ltd. S Ltd then went into receivership. The trustees claimed that the further advances were covered by the standard security which they held as assignees. The trustees raised an action to enforce.

Assignations of standard securities are permitted by s 14 of the Conveyancing and Feudal Reform (Scotland) Act 1970. That section provides:

55 Lord Rodger of Earlsferry, *The Church, the Courts and the Constitution* (2008) 95: “That feudal law, which has a strong claim to being the real intellectual achievement of the Scottish judges, was unceremoniously binned by the Scottish Parliament, unmourned even by its supposed acolytes, the Professors of Conveyancing.” Although, as Robert has pointed out, he is the last Professor to hold a titular Chair of Conveyancing: R Rennie, “The End of Conveyancing as we know it” (2003) 48(11) *JLSS* 15 and “A Tale of Two Systems” (2014) 59(11) *JLSS* 13.

56 1994 *SLT* 645 OH.

Any standard security duly registered or recorded may be transferred in whole or in part, by the creditor by an assignation in conformity with Form A or B of schedule 4 to this Act, and upon such an assignation being duly registered or recorded, the security, or, as the case may be, part thereof, shall be vested in the assignee as effectually as if the security or the part had been granted in his favour.

Form A appeared to require specification of either (a) the certain sum for which a security is granted; (b) a maximum sum of £X, to the extent of £Y being the amount now due thereunder; or (c) other cases described in terms of a Note to the form.⁵⁷ In *Sanderson's Trs*, because the standard security assigned was in "all sums" terms, it was argued that the assignation was not in Form A terms and thus ineffectual. That argument was shortly disposed of on the basis that "sufficient compliance" with the forms and procedure contained in the 1970 Act, provided that the assignation "so conforms as closely as may be."⁵⁸ But Lord Dunpark also provided a number of powerful rationales for why specification of the sum should not be necessary.

His Lordship did not find the pre-1970 law of much assistance. The Bankruptcy Act 1696, as we have seen, rendered invalid any attempt to extend a heritable security to a debt contracted after the recording of the heritable security.⁵⁹ The *ex facie* absolute disposition in security, Lord Dunpark recognised, "was the only pre-1970 method of creating a real security for future, as well as for past, loans, without limit of amount."⁶⁰ And where the creditor in such a case – the infert owner – sought to transfer his position, by assignation (of the debt) and disposition (of ownership of the land), there was no requirement to specify the debt assigned.⁶¹

57 The Note is in these terms: "In an assignation, discharge or deed of restriction (1) a standard security in respect of an uncertain amount may be described by specifying shortly the nature of the debt or obligation (e.g. all sums due or to become due) for which the security was granted, adding in the case of an assignation, *to the extent of £X being the amount now due thereunder* and (2) a standard security in respect of a personal obligation constituted in an instrument or instruments other than the standard security itself may be described by specifying shortly the nature of the debt or obligation and referring to the other instrument or instruments by which it is constituted in such manner as will be sufficient identification thereof."

58 1970 Act, s 53(1).

59 Ibid, s 9(6).

60 1994 SLT 645 at 649H.

61 This form of security – *fiducia cum creditore* – suffers from the disadvantage that the creditor becomes the owner of the collateral. As a result, the creditor can transfer good title to a third party. The borrower, who pays back the debt, may not then be able to acquire a re-transfer of the property from the creditor, not least in the situation where the creditor has become insolvent.

The next rationale identified by Lord Dunpark was that, in a case where the only party who has an obligation to make further advances is the cedent (the creditor of the outstanding sums) it makes sense for any assignation to crystallise the sums assigned. In such a case, where a creditor seeks to assign the claim presently owed to him with the security, it is necessary to specify the sum assigned. Ceding and assignee need to know what is being assigned. Suppose a facility of £1000 of which £500 is outstanding. Any assignation by the creditor has to specify the sum because the creditor as cedent. For having agreed to a facility of £1000, the cedent has an obligation to extend credit to that sum. The obligation to make further advances cannot be assigned. The case of further advances by a cedent, following assignation of an existing claim plus the security, is the inverse situation of further advances on a second security being taken. With assignation, the cedent transfers away the first-ranking position. In a case where there are two securities, one ranking behind the other, the s 13 notice may crystallise the sum for which the first-ranking security holder maintains his first ranking security.

(3) The problems

It was Professor Gretton who highlighted the great practical difficulties which may arise on the assignation of all sums securities, in an article which accompanied the reporting of the *Sanderson's Trs* decision.⁶² He used this example: a debtor grants an all-sums security to the Bank of Pictavia. Suppose the loan was originally for £100,000 but the indebtedness is now down to £1,000. The same debtor has unsecured indebtedness to the Bank of Dalriada for £100,000. As Professor Gretton pointed out, were the Bank of Dalriada to take an assignation of the security the debtor would now find himself with £101,000 of secured debt. Suppose, then, Professor Gretton asked, the debtor had concluded missives to sell his property, on the basis that the £1,000 would be discharged from the purchase price. Prior to settlement, the debtor learns that the Bank has assigned its security and that he will need to come up with a redemption figure that is now in six figures. Such a result, Professor Gretton argued, would be "absurd," for it could place the debtor in breach of his missives. Similarly, if the debtor were to be sequestrated shortly after the assignation of the security, the result would be that the Bank of Dalriada had managed to jump the unsecured

62 G L Gretton, "Assignment of All Sums Standard Securities" 1994 *SLT* (News) 207.

creditors' queue, without being subject to the law of unfair preferences. For the law of unfair preferences applies only to acts of the debtor.⁶³ An onerous assignation by one creditor to another, in contrast, like a ranking agreement concluded between creditors, is challengeable neither under statute nor, probably, at common law.⁶⁴

Nonetheless, I suggest that Lord Dunpark's decision was correct and that assignations of all sums securities are permitted. The result, I would suggest, is not absurd, for the following reasons:

- (i) The debtor seeking to sell his heritable property is, *ex hypothesi*, doing so for a price. That price can be used to pay, in Gretton's example, the Bank of Dalriada (the assignee of the security) at settlement;
- (ii) Even in the absence of assignation of the security, the Bank of Dalriada could use diligence by inhibition, the effect of which would cause the same problems as an undischarged standard security (diligence may, of course, not be possible if there has been no default on the unsecured loan to Bank of Dalriada, but if there has been no default somewhere, it is less likely that the BofD would be in the market for a security).⁶⁵
- (iii) The argument that the debtor's land "cannot be burdened by the extra £100,000 without his consent,"⁶⁶ ignores the fact that the debtor has already expressly, by his own deed, granted an all-sums security.
- (iv) The effect of assignation of an all sums standard security is contained, as Gretton observes, in s 14 of the 1970 Act. Section 14 provides that, "upon such an assignation being duly registered or recorded, the security, or, as the case may be, part thereof, shall be vested in the assignee as effectually as if the security or the part had been granted in his favour." The effect of the assignation, therefore, curiously, is *ex tunc*: the security is deemed to have been granted to the assignee from day one.
- (v) The assignation of the security would not breach a pre-existing negative pledge clause granted by the debtor: as Gretton himself perceptively observes, the assignation is not an act *of the debtor*. Moreover, the effect of s 14 is to deem the security to have been granted by the debtor to the assignee. If the security, as granted by the debtor, was not a breach of the negative pledge clause, neither is the assignation.

63 Bankruptcy (Scotland) Act 1985, s 36(1).

64 Of course, there may be questions about the extent to which an assignation is valid. An assignation of an all sums security for £1,000 (the outstanding indebtedness) could be said to be valid only to the extent of £1,000 of debt.

65 The loan agreement between the debtor and the Bank of Dalriada – assuming the unsecured indebtedness arose under a loan – may contain a consent to preservation and execution clause, although, if the debtor is a consumer, Consumer Credit Act 1974, s 93A may prevent summary diligence.

66 Gretton (n 260) at 209.

- (vi) The assignation forms contained in Schedule 4 to the 1970 Act cannot supply a requirement not mentioned in s 14, namely that any all sum standard security is immediately converted into a security for a fixed sum. The wording of the style assignation in Schedule 4 does appear to envisage specification of a maximum sum for which the security is assigned. That may be for a fixed sum. But there is no good reason why the assignation may not be expressed to mirror the terms of the security itself: for “all sums due and to become due.” As the Lord Ordinary held in *Sanderson’s Trs v Ambion Scotland Ltd*, an assignation of a standard security is not necessarily disconform to the Act if it does not state the sum due to the cedent at the date of the assignation. The Lord Ordinary in *Liquidator of Letham Grange Development Co Ltd v Foxworth Investments Ltd*,⁶⁷ also held that it is possible to have a hybrid Form A/Form B security. Strict conformity, with either the security or the assignation forms, does not appear to be required, providing the security is consistent with the operative terms of the Act.
- (vii) Assignations of personal rights to payment occur without the consent of the debtor. At common law, accessory securities (in the wide sense, including personal securities, such as cautionary obligations) are transferred with an assignation of the claim even if there is no mention of the accessory securities. The debtor’s consent to assignation of either the underlying debt or a security granted in respect of that debt is not therefore required.⁶⁸
- (viii) Indeed, under the law of catholic and secondary creditors (which applies admittedly as between two or more secured creditors) the law sometimes implies a transfer of securities between creditors, where the creditors, as well as the debtor, do not expressly consent.⁶⁹
- (ix) As Gretton observed, it was Professor Halliday’s view that in order for an assigned standard security to cover further advances by the assignee, a formal variation of the security would be required.⁷⁰ The rationale is that such a variation would supply the debtor’s express consent to the security covering post-assignation further advances by

67 2011 *SLT* 1152 at para [101], *per* Lord Glennie (revd on a different point, [2013] *CSIH* 13; 2013 *SLT* 445, itself revd [2014] *UKSC* 41, 2014 *SLT* 775).

68 Even claims arising out of regulated consumer credit agreements which are not secured on land may be freely assigned by the creditor although may be assigned without the debtor’s consent (although, between 1 February 2011 until 30 March 2014), Consumer Credit Act 1974, s 82A required the creditor to notify the debtor. The purpose s 82A, and Art 17 of the Consumer Credit Directive 2008/48/EC, was obscure given existing EU members states’ private laws on the question.

69 *Littlejohn v Black* (1855) 18 D 207 referred to with approval by Lord Reed in *Szepietowski v National Crime Agency* [2014] *UKSC* 65, [2014] *AC* 338 at paras [81]–[84].

70 J M Halliday, *Conveyancing and Feudal Reform (Scotland) Act 1970*, 2nd edn (1977) para 9-07; *Conveyancing Law and Practice* (1987) vol III, para 40-19.

the assignee of the security to the debtor. But is the best evidence of the debtor's consent to those further advances being covered not, in fact, the debtor's consent to the acceptance of those further advances? It might be argued that, at the stage any such advances have been made, the debtor would not necessarily know that the security has been assigned, since s 14 envisages registration rather than intimation. But that point is an argument for requiring, as under the general law of assignation, intimation to the debtor in order to interpell the debtor with the effects of the assignation. Further advances by an assignee of the security is yet another situation where it is intimation that could be said to play a central role: until the assignee has intimated the assignation to the debtor, any advances by the assignee will not be covered by the security.⁷¹

- (x) Finally, and perhaps most tellingly, the permissibility of assignation of all-sums securities, in policy terms, can be tested by the mirror-image situation. Take the example of the Bank of Pictavia and the Bank of Dalriada referred to above. The Bank of Pictavia has an all sums security but only £1,000 of indebtedness, while the Bank of Dalriada has unsecured claims for £100,000. There is nothing wrong with the Bank of Pictavia taking an assignation of the Bank of Dalriada's unsecured claim. The effect would be that the all-sums security now covered the £101,000. The effect on any proposed sale by the debtor would be the same.

E. Practicalities

(1) The debtor who has granted an all sums security

All this having been said, however, the practical difficulties highlighted by Professor Gretton remain. Suppose the debtor has concluded missives to sell in the knowledge, in our example, that he has only £1,000 of debt outstanding to the Bank of Pictavia. After conclusion of the missives, he learns that the Bank of Dalriada, to whom he is already indebted to the extent of £100,000 now holds the security. Does this assignation render him in breach of the missives? Any breach of the missives relates to the warranty of "good and marketable title" not to acts of the seller, for, in our example, the seller has done nothing. The assignation is not an act of the seller. How then can the debtor under an all sums security protect himself?

⁷¹ Cf Land Registration (Scotland) Act 2012, s 41. But that applies only to applications under s 21 or 29. An application to register the assignation of a registered standard security would fall under s 26.

There are two practical responses: the first by transactional lawyers, the second by the courts.

(2) The need for intimation

Transactional lawyers seeking redemption statements from a heritable creditor that holds an all sums security need to seek an undertaking that no assignation of the security has taken place or will take place prior to settlement. The response of the courts must be to apply by analogy the traditional Scottish approach to intimation: although the assignation of the security may take place only on registration, that registration cannot affect the debtor, even with respect to existing indebtedness, unless and until the assignee of the security has interpellated the debtor by intimating the assignation of the all sums security to him. For because assignation takes place without the debtor's consent, the debtor cannot be prejudiced by that about which he does not know and about which he has no obligation to inquire. The result is that if a debtor concludes missives to sell, without having received intimation of the assignation of the security, the security, in any question with the debtor, cannot cover more than was due to the original creditor. The debtor, qua seller, has no obligation to run searches to check that the holder of his all sums security has not changed. That this is the correct analysis can be tested by asking the question of what would happen in the mirror-image situation where the creditors agree between themselves to assign not the security but the claim: the unsecured creditor assigns the claim to the holder of the all sums security. That assignation has effect against the debtor only from the date of intimation. If the debtor has entered into missives to sell the property, but between missives and settlement there has been a registration of an assignation of the security,⁷² the seller cannot be prejudiced until the assignation has been intimated to him: he need redeem only to the extent of £1,000.⁷³ As a result of that payment, he is entitled to a discharge of the security from the assignee who, in turn, may have a claim against the cedent. The assignee *may* have

72 Of course, in most cases involving a sale, a registration of an assignation of the security prior to settlement will be picked up in the searches, alerting the buyer to the need for a discharge from the assignee.

73 The Scottish Law Commission is likely to recommend the abolition of intimation as a constitutive requirement for completing an assignation. But intimation will remain, as it does in other legal systems which allow for effective assignation without intimation, for practical purposes to "interpel" the debtor.

a breach of warrandice claim against the cedent, but probably not. For the warrandice in an assignation of a claim plus security is only *debitum subesse*: the debt is due and owing. But for warrandice purposes, as for others, that warranty can be given only at the date of the assignation. Take again the example of £1,000 owed by the seller under a standard security, which is assigned to another creditor who has unsecured indebtedness of £100,000. In ignorance of any assignation of the security, the borrower concludes missives to sell the property in good faith. The borrower cannot be prejudiced by the assignation and the assignee must be considered to have bought a claim only of £1,000, albeit with an all sums security. In order for the assignee of the security to interpell the debtor with knowledge that the assignee now has an all sums security which, because of pre-existing outstanding indebtedness to the assignee now encompasses £101,000, intimation by the assignee to the borrower is required.

(3) Further advances

The question often arises whether an assignee of an all sums security is secured for any further advances made by the security holder. Providing there is no competition with any other security holder, no problems will arise. As I have indicated, any problems which may be thought to occur with the assignation of an all sums security, can often be avoided if, as is often the case in corporate groups, that it would be possible to effect the assignation of the claim to the existing all sums security holder. This is often the easiest way to deal with further advances issues that may arise. In the event that the security is assigned then, depending as always on the terms of the documentation, it may well be that the provisions of s 14 – deeming, on registration of the assignation, the security always to have been held by the assignee – are sufficient to cover any advances that the assignee may propose to make.

(4) Practical results

In the result, therefore, although I have disagreed with some of the reasoning first offered by Professor Gretton in his pioneering article on the assignation of all sums securities 20 years ago, and with which all studies of this subject must begin, we are not far apart either on principle or in the result. The assignation of all sums securities – including cases involving the taking of standard securities over existing standard securities which

sometimes incorporate assignments⁷⁴ – needs to be carefully thought through. I, for one, would not go quite as far as Sheriff Cusine in describing the assignment of standard securities for a fluctuating amount, as in the case of an “all sums” security as “undesirable,”⁷⁵ although, as I have sought to highlight, the lack of careful thought leaves a potential mine field of problems for the unwary. But, with careful preparation, there may be a number of practical advantages, particularly in the corporate sphere, to be gained from taking the assignment of all sums securities. In most cases, however, if, at the outset, there is a likelihood for a need to assign or allow the possibility of further participation in the secured creditor’s position, Gloag’s advice, given over a century ago, remains good: the all sums security and indebtedness should be constituted in favour of a security trustee, with further participation taking place privately between the creditors.⁷⁶ The delights of partial assignments of all-sums securities may be left for another time.⁷⁷

F. Conclusions

Robert Rennie’s retiral marks not just the end of chapter of a busy professional life: it also marks a sad break for an institution which, for centuries, has maintained close contact with its own graduates in the legal profession in the West of Scotland. The University has paid Robert a back-handed compliment of sorts by deeming Robert to be irreplaceable and making no attempts to refill the Chair. The decision not to replace Robert brings an end to a significant chapter in the history of law teaching in the Scottish universities. What started with the appointment of Macvey Napier to the Edinburgh Conveyancing Chair in 1824 comes to an end with the retirement of Robert Rennie as the holder of the Glasgow Chair in 2014. At a stroke, vast numbers of arbitration clauses, tucked away in Deeds of Conditions to a significant proportion of Glasgow’s tenement properties, appointing the Professor of Conveyancing in the University as arbiter, may be frustrated.⁷⁸ The professionalism of local practitioners is also likely to avoid the unseemly situation of other Professors of Law in the University,

⁷⁴ See e.g. *UK Acorn Finance Ltd v Smith*, [2014] Sh Ct Banff 25 (14 July 2014).

⁷⁵ D J Cusine, *Standard Securities* (1991) para 6-11; D J Cusine and R Rennie, *Standard Securities*, 2nd edn (2002) para 6-06.

⁷⁶ W M Gloag and J Irvine, *Rights in Security* (1897) 126, n 5.

⁷⁷ See e.g. Gloag and Irvine (n 274) 126.

⁷⁸ Anecdotal evidence suggests that these clauses are only infrequently invoked.

with considerably less experience of Conveyancing than even the great scholar McKechnie, being approached to accept an appointment to rule on the finer points of the abstruse science. But I prefer to close by focussing instead on Robert's qualities as a man, in particular his industry, integrity and, above all, good humour.

The University of Glasgow without the waist-coated Professor Rennie will be a poorer place; but the University, without a Professor of Conveyancing at all, will be a poorer place still.